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REMARKS

Claims 1 and 3-49 are currently pending in the application. By this amendment, claims 1, 16, 17, 19, 26, 29, 32, and 39 are amended and claims 46-49 are added for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at pages 7, 8, 13, 15, and 21 of the specification. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Reply to the Examiner's Response to Arguments

Applicant respectfully disagrees with the Examiner's responses to arguments. In particular, as to point (2) on page 13 of the Office Action, Applicant submits that the claim language is written such that the criterion includes a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic. Applicant submits that the "at least one" language referenced by the Examiner is in reference to the criterion. The "at least one" language is not in reference to what the criterion includes, i.e., the system level criterion, the transaction level criterion, the multi-transactional level criterion, and the workload characteristic. Accordingly, Applicant respectfully reiterates the argument that the Maso reference (U.S. Publication No. 2003/0061265) discloses monitoring system performance metrics. However, Maso does not disclose a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic.

Claim Objections

The Examiner has objected to claims 1, 3-25, 40, and 41 for a potential rejection under 35 U.S.C. §101. Specifically, the Examiner asserts that claims 1 and 19 do not explicitly recite another statutory class of invention nor inherently require the use of a

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particular machine or apparatus. While Applicant does not agree with the Examiner's objection, in order to advance prosecution, Applicant has nonetheless amended independent claims 1 and 19 to address the Examiner's objection. Applicant submits that claims 1 and 19, as amended, explicitly recite a statutory class of invention. Accordingly, Applicant respectfully requests the objection of claims 1 and 19 be withdrawn.

Moreover, as claims 3-18, 20-25, 40, and 41 depend from independent claims 1 and 19, Applicant submits that claims 3-18, 20-25, 40, and 41 are also directed to a statutory class of invention. Therefore, Applicant respectfully requests the objection of claims 3-18, 20-25, 40 and 41 be withdrawn.

35 U.S.C. §102 Rejection

Claims 1, 3-7, 15, 18-20, 22, 26, 28, 32, 33, 35, and 39 were rejected under 35 U.S.C. §102(e) for being anticipated by U.S. Publication No. 2003/0061265 issued to Maso, *et al.* ("Maso"). This rejection is respectfully traversed.

In accordance with the guidelines set forth in MPEP 2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant submits that the reference applied by the Examiner does not show each and every feature of the claimed invention.

Claims 1, 19, 26, 32, and 39

Claim 1 recites, in pertinent part:

... implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

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Claim 19 recites, in pertinent part:

... implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Claim 26 recites, in pertinent part:

... a means for implementing an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Claim 32 recites, in pertinent part:

... a means for implementing an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Claim 39 recites, in pertinent part:

... a fifth computer code to implement an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

As discussed above and in the last response, Applicant submits that Maso does not disclose a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic. However, to advance prosecution, Applicant has nonetheless amended independent claims 1, 19, 26, 32, and 39. Applicant submits that Maso fails to disclose each and every feature of the claimed invention, as amended.

Specifically, Maso does not implement an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source. Instead, Maso discloses an application manager, which is a constant monitoring and recovery system that enables the measurement of task metrics and performance of software-based business applications. (Abstract.) The application manager includes an instrumentation application program interface, which includes an instrument system performance metrics feature. The instrument system performance

metrics feature is used to monitor activity specific to the enterprise and may include metrics for load variations, average response time specific to a task occurring outside of the webpage, or enterprise specific issues. (Paragraph [0089].) Specifically, the instrument system performance metrics feature monitors instruments, SNMP statistics, Windows NT/2000, and Perfmon metrics. (Paragraphs [0021]-[0023].)

Maso also includes an event notification and automatic recovery evaluation engine (P.A.M. Engine). (Paragraph [0016].) The P.A.M. Engine takes information from the instrumentation application programming interface, evaluates it, and then takes appropriate preprogrammed actions. (Paragraph [0097].) For example, the event notification portion of the P.A.M. Engine can be used to alert system administrators when performance thresholds are reached or when a complete restart of a failed application is necessary. (Paragraph [0036].)

Accordingly, Maso includes an application manager, an instrumentation application program interface, and a P.A.M. Engine, which are used to monitor system performance metrics but not system level criterion, transaction level criterion, multi-transactional level criterion, and workload characteristics. Moreover, even if Maso were to include all of these features, which Applicant does not concede, Applicant submits that there is no disclosure that Maso includes an interval criterion matrix, much less an interval criterion matrix that is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source. Accordingly, Applicant submits that claims 1, 19, 26, 32, and 39 are not anticipated and respectfully request the rejection of claims 1, 19, 26, 32, and 39 be withdrawn.

In addition to not being anticipated by Maso, Applicant submits that the claimed invention is not obvious in view of the art of record, and specifically U.S. Patent No. 6,738,933 issued to Fraenkel, et al. ("Fraenkel"). For example, Applicant submits that Fraenkel does not implement an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source. Instead, Fraenkel provides software systems to monitor post-

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deployment operations of a web site system or other transactional server. (Col. 2, lines 28-50.) During the monitoring session, each agent computer generates performance data that indicates one or more characteristics of a transactional server's performance. (Col. 3, lines 24-32.) This data is reported so that a user can view and compare performance of a transactional server from different operator-specified locations, organizations, ISPs, or attribute types. (Col. 3, lines 44-60.) For example, a report may be generated for a user on transactional health and the report may be broken down according to a computer attribute, such as geographic location. (Col. 17, lines 14-34.) Fraenkel allows this data to be transmitted when a transaction fails or when path delays between the agent computer and the transactional server exceeds a preprogrammed threshold. (Col. 4, lines 11-23.)

Accordingly, while Fraenkel provides a monitoring system, there appears to be no disclosure that Fraenkel implements an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source. Accordingly, Applicant submits that claims 1, 19, 26, 32, and 39 would not be obvious were Fraenkel to be applied.

Claims 3-7, 15, 18-20, 22, 28, 33, and 35

Claims 3-7, 15, 18-20, 22, 28, 33, and 35 are dependent claims, depending on independent claims 1, 19, 26, and 32, respectively. For this reason, Applicant submits that these claims are thus distinguishable based on respective independent claims 1, 19, 26, and 32. Accordingly, Applicant respectfully requests the rejection over Claims 3-7, 15, 18-20, 22, 28, 33, and 35 be withdrawn.

35 U.S.C. §103 Rejection

Claims 8-14, 16, 17, 21, 23-25, 27, 29-31, 34, 36-38 and 40-45 were rejected under 35 U.S.C. §103(a) for being unpatentable over Maso in view of U.S. Patent No. 6,738,933 issued to Fraenkel, *et al.* ("Fraenkel"). This rejection is respectfully traversed.

Claims 8-14, 16, 17, 21, 23-25, 27, 29-31, 34, 36-38 and 40-45 are dependent claims, depending on independent claims 1, 19, 26, and 32. For this reason, Applicant submits that these claims are thus distinguishable based on independent claims 1, 19, 26, and 32. Accordingly, Applicant respectfully requests the rejection over claims 8-14, 16, 17, 21, 23-25, 27, 29-31, 34, 36-38 and 40-45 be withdrawn.

Other Matters

Claims 46-49 are added for the Examiner's consideration. Applicant submits that claims 46-49 contain allowable subject matter. Moreover, no combination of the applied references teach or suggest the features of claims 46-49.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 09-0457.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a stylized, flowing script.

Andrew M. Calderon
Registration No. 38,093

Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
Telephone: 703-716-1191
Facsimile: 703-716-1180